Ng Ee Loon v Tan Peng Lee

HIGH COURT (PULAU PINANG) — DIVORCE PETITION NO 33-488 OF 1997 (CT-2)
ZALEHA ZAHARI J
16 NOVEMBER 1998

Family Law *— Children — Maintenance — Application for — Whether respondent husband has neglected to maintain child — Factors considered in determining quantum — Law Reform (Marriage and Divorce) Act 1976 s 92*

Family Law *— Financial obligation — Maintenance payment — Whether an attachment of earnings order should be granted in respect of husband's salary — Factors considered*

The petitioner filed a notice of intention to proceed with the application for ancillary relief, claiming for a sum of RM500 as maintenance for her child ('the child') whom she obtained custody of, pursuant to a divorce petition filed on 1 December 1997. The petitioner also sought to secure the payment of the maintenance order by an attachment of earnings order. The petitioner alleged that the respondent had not made any contribution towards maintenance of the child since he was placed in her custody on 23 October 1997 pursuant to a court order for interim custody. The petitioner required a sum of RM500 a month for the child's expenses. The respondent, an operations manager, admitted earning RM3,500 a month but contended that RM500 was 'ridiculous and is too high' and was only willing to pay RM200 a month. He further pointed out that he had taken an insurance policy of RM80,000 and, about $1^1/_2$ years ago, opened a savings account with a deposit of RM1,000 in the child's favour, and was willing to deposit a regular sum of RM500 into the account.

Held, allowing the application:

(1) The respondent had clearly neglected to maintain the child since 23 October 1997 contrary to his legal duty as provided under s 92 of the Law Reform (Marriage and Divorce) Act 1976. The sum of RM200 offered by the respondent was extremely nominal. It clearly did not commensurate with the respondent's means and station in life. Since the respondent was willing to pay a periodical sum of RM500 into the child's savings account, it can be concluded that the respondent clearly had the means and was able to pay the sum of RM500. Considering the size of the respondent's income, it was fair that he should pay maintenance of RM500 per month (see pp 176F, H–177C).

(2) Based on the affidavit evidence of the conduct of the respondent, it would appear there was a need to fortify the maintenance order by an attachment of earnings order. There was a real likelihood that the respondent had every intention of making things difficult for the petitioner. The petitioner should not be burdened by

having to take fresh court proceedings to ensure that the respondent meets his legal responsibilities towards the child. The sum of RM500 was ordered to be attached from the respondent's salary (see p 177E–F, G–H).

[Bahasa Malaysia summary

Pempetisyen telah memfailkan satu notis niat untuk meneruskan permohonan bagi relif sampingan, menuntut sebanyak RM500 sebagai nafkah untuk anak beliau ('anak tersebut') yang mana beliau telah memperolehi penjagaan di bawah satu petisyen penceraian yang difailkan pada 1 Disember 1997. Pempetisyen juga memohon untuk menjamin pembayaran terhadap perintah nafkah melalui satu perintah penahanan gaji. Pempetisyen mendakwa bahawa responden telah tidak membuat sebarang penyumbangan kepada nafkah anak tersebut semenjak ia diletakkan dalam penjagaannya pada 23 Oktober 1997 mengikut satu perintah mahkamah untuk penjagaan interim. Pempetisyen memerlukan sejumlah RM500 sebulan untuk perbelanjaan anak tersebut. Responden, seorang pengurus operasi, mengaku berpendapatan sebanyak RM3,500 sebulan tetapi menghujahkan bahawa jumlah RM500 adalah 'tidak munasabah dan adalah terlalu tinggi' dan beliau hanya bersedia untuk membayar RM200 sebulan. Beliau, selanjutnya, menegaskan bahawa beliau telah mengambil satu polisi insurans berjumlah RM80,000 dan, lebih kurang $1^1/_2$ tahun yang lalu, telah membuka satu akaun simpanan dengan deposit sebanyak RM1,000 untuk anak tersebut, dan sanggup untuk mendepositkan RM500 secara tetap ke dalam akaun tersebut.

Diputuskan, membenarkan permohonan:

(1) Responden telah dengan jelas gagal untuk memberi nafkah kepada anak tersebut semenjak 23 Oktober 1997, bertentangan dengan tanggungjawab perundangan beliau seperti yang diperuntukkan di bawah s 92 Akta Membaharui Undang-Undang (Perkahwinan dan Penceraian) 1976. Jumlah sebanyak RM200 yang ditawarkan oleh responden adalah terlalu nominal. Ia jelas tidak setara dengan sumber pendapatan dan kedudukan responden dalam kehidupan beliau. Memandangkan bahawa responden bersedia untuk membayar sejumlah RM500 secara berkala ke dalam akaun simpanan anak tersebut, boleh disimpulkan bahawa responden dengan jelas mempunyai kesanggupan dan berkemampuan untuk membayar jumlah sebanyak RM500. Dengan menimbangkan saiz pendapatan responden, adalah adil bahawa beliau patut membayar nafkah sebanyak RM500 sebulan (lihat ms 176F, H–177C).

(2) Berdasarkan kepada keterangan afidavit tentang kelakuan responden, kelihatan bahawa terdapat satu keperluan untuk memperkukuhkan perintah nafkah dengan satu perintah penahanan gaji. Terdapat satu kemungkinan yang benar bahawa

responden mempunyai niat untuk menyusahkan pempetisyen. Pempetisyen tidak seharusnya dibebani dengan keperluan untuk memulakan satu prosiding mahkamah yang baru untuk memastikan bahawa responden mematuhi tanggungjawab perundangannya terhadap anak tersebut. Jumlah RM500 tersebut diperintahkan ditahan daripada gaji responden (lihat ms 177E–F, G–H).]

Notes

For cases on maintenance of children, see 7 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1844–1846.

For cases on maintenance payments, see 7 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1997–2060.

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 s 92

Lalitha Menon (*Lalitha Menon & Associates*) for the petitioner.
N Nekaretnam (*S Hameed Venu & Co*) for the respondent.

Zaleha Zahari J: Prior to the filing of this divorce petition, vide Penang High Court Originating Summons No 24-711-97, Ng Ee Loon ('the petitioner') applied for, and with the consent of Tan Peng Lee ('the respondent') was granted interim custody of their son, Tan Hung Sien ('the said child') by a court order dated 23 October 1997.

About 5 weeks later, on 1 December 1997, the petitioner filed this divorce petition. A consent order was recorded on 19 May 1998 in respect of prayers 13(i), (ii) and (iii). The petitioner was accordingly, inter alia, granted custody of the said child. In respect of prayer 13(iv) by which the petitioner claimed RM500 as maintenance for the said child, this item was disputed by the respondent. Parties were given liberty to apply in respect of this item.

On 23 July 1998, the petitioner filed a Notice of Intention to Proceed with the Application for Ancillary Relief (encl 16). She claimed a sum of RM500 as maintenance for the said child with effect from 1 December 1997, ie the date of filing of the divorce petition. She also sought to secure payment of the maintenance order made by court by an attachment of earnings order.

On 9 October 1998 after hearing submissions of both counsels for the petitioner and the respondent, I granted an order in terms of the petitioner's notice in encl 16. My reasons follow.

Vide affidavit affirmed on 24 July 1998 (encl 15), the petitioner complained that the respondent had not made any contribution towards maintenance of the said child since the child was placed in her custody. As to the financial means of the respondent, according to the petitioner, the respondent earned RM3,500 a month at the point of time when she left the matrimonial home when he was the assistant manager of Goldstar Magnet

Wire Sdn Bhd. She believed him to be earning more now as the respondent had since been promoted to be the operations manager of the same company. A

The petitioner averred to requiring a sum of RM300 a month for food, vitamins, clothes, toys, medical expenses and other miscellaneous expenses. She also averred to the fact that she would be sending the child to the nursery in January 1999 which would cost her an additional RM200 a month. B

In reply, vide affidavit affirmed on 13 August 1998 (encl 17), the respondent admitted to earning only RM3,500 a month and not more, as contended by the petitioner, notwithstanding his promotion as the operations manager. C

As to the quantum of RM500 claimed by the petitioner, he was of the view that this sum was 'ridiculous and is too high'. He was of the view it was not necessary for the child to be sent to the nursery. The respondent was only willing to pay a sum of RM200 a month. Further, in para 5 of his affidavit, he brought the court's attention to the fact that he had taken an insurance policy in the sum of RM80,000 in favour of the said child, and that he had, about $1^1/_2$ years ago, opened a savings account and deposited a sum of RM1,000 in the said child's favour. In para 5(c), he averred of his intention and willingness to deposit a regular sum of RM500 in favour of the said child into this savings account. D E

Section 92 Law Reform (Marriage and Divorce) Act 1976 clearly provides that it shall be the duty of a parent to maintain or contribute to the maintenance of the child by providing such accommodation, clothing, food and education as may be reasonable having regard to his/her means and station in life. On the facts of this case, the respondent had not taken issue with the petitioner's averment that he had failed to provide maintenance for the child since the child was placed in the petitioner's custody, ie 23 October 1997. The respondent had clearly neglected to maintain the said child since 23 October 1997 contrary to his legal duty as provided under s 92. F

Coming now to the issue of quantum. What sum would, in the circumstances of this case, be considered adequate for the maintenance of the said child for accommodation, clothing, food, etc having regard to the respondent's earning capacity and position in life and necessities? It is not in issue that the petitioner is herself gainfully employed and is to be held equally responsible for the maintenance of the said child. G H

It appears to me that the sum of RM200 a month offered by the respondent as maintenance for the said child works out to be extremely nominal and works out to be RM6.66 a day. I very gravely doubt whether this sum is sufficient to maintain a child in this age. Times have changed. The cost of living has gone up. This token sum clearly does not commensurate with the respondent's means and station in life and the child should not, on the facts of this case, be deprived of the benefit of his father's means. I

A The respondent had not held out his monthly expenditure in his affidavit. The court, however, notes from the respondent's affidavit that the respondent was willing to pay a periodical sum of RM500 into the son's savings account which he had voluntarily opened in favour of the said child almost one and a half years ago. By this, it can be concluded that the respondent clearly has the means and is able to pay the sum of RM500, but for reasons best known to B the respondent, is unwilling to give the petitioner access to the said sum towards maintenance of the said child but prefers to retain the same in his own name for the benefit of the child. I get the impression that the objection to quantum is mooted not out of inability to pay, nor of a consideration of the actual needs and interests of life's necessities of the said child, but an C expectancy on the respondent's part for the petitioner to bear the full brunt of the expenses of bringing up the said child by reason of the fact that she wanted custody of the said child in the first place.

On the facts of this case, considering the size of his income, in my opinion it is fair that the respondent should pay maintenance of RM500 per month for the said child as applied for by the petitioner.

D

With regard to the petitioner's application to fortify the maintenance order by the making of an attachment of earnings order to ensure the respondent complies with the said order, counsel for the respondent submitted that such order should only be made if there was evidence that the respondent had wilfully disobeyed a court order and that there was E therefore a need for the court to make an order to compel him to observe it. As I understand the submission of counsel for the respondent, the respondent should be given an opportunity to comply with the court order before an order compelling him to comply, can be made by the court.

Based on the affidavit evidence before me of the conduct of the F respondent, it would appear there was a need to fortify the maintenance order by an attachment of earnings order. The respondent was clearly aware and recognized his legal obligation to maintain the child and had the means to do so, but chose to sit back and fold his arms and had not given the petitioner a cent. The petitioner then had to resort to take court proceedings to compel the respondent to meet his obligations and, as enumerated above, G was only prepared to pay a token sum and the matter had to be fully argued and adjudicated upon.

On the facts of this case, I am of the view that there is a real likelihood that the respondent has every intention of making things difficult for the petitioner. I am of the view the petitioner should not be burdened by having H to take fresh court proceedings to ensure that the respondent meets his legal responsibilities towards the said child. In these circumstances, the application in prayer (b) was also allowed and I ordered that the sum of RM500 per month as maintenance be attached from the respondent's salary in Goldstar Magnet Wire Sdn Bhd.

I *Application allowed.*

Reported by Tan Kah Bee